

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

**WILLIAM JOSEPH WEBB JR.,
Plaintiff,**

CIV. ACT. NO. : 07-31-GMS

V.

JURY TRIAL REQUESTED

**FIRST CORRECTIONAL MEDICAL,
ET. AL.,
Defendants.**

**PLAINTIFF'S BRIEF IN OPPOSITION TO THE DEFENDANT
GOVERNOR RUTH ANN MINNER'S MOTION TO DISMISS AND MEMORANDUM
OF POINTS AND AUTHORITIES.**

Comes now, Plaintiff William Joseph Webb Jr. in presenting this Brief opposing Defendant's Motion to Dismiss and Memorandum of Points and Authorities for the good cause shown, the Court should deny the Motion to Dismiss:

I. STANDARD FOR MOTION TO DISMISS.

A Motion to Dismiss is to be made before an answer is filed. Governor Ruth Ann Minner has already Answered the Complaint, therefore this Motion to Dismiss is frivolous and without merit.

**II. GOVERNOR MINNER WAS DELIBERATELY INDIFFERENT TO PLAINTIFF'S
SERIOUS MEDICAL NEEDS.**

The Complaint clearly states that during the hearings held in Dover in connection with the Medical Care Provider, First Correctional Medical's care of Delaware inmates, that Governor Ruth Ann Minner knew of Plaintiff's needs where His sister attended those meetings and spoke on the behalf of Plaintiff describing in detail most of the claims made in the Complaint with the exception of all 2006 incidents which refer to Defendant "CMS".

The second statement made by Plaintiff in the Complaint states that Plaintiff was denied adequate medical care where Governor Minner refused to do anything to ensure that inmates including Plaintiff

were receiving medical care until the federal government had to step in and force the hand with an agreement to force the State of Delaware to get a grip on its duties to inmates under its care.

It is clear that the Plaintiff is stating in the Complaint that Governor Minner knew that constitutional violations were occurring and failed her position and her civil duty to treat all with humanity.

A Motion to Dismiss is to be made before an answer is filed. Governor Ruth Ann Minner has already Answered the Complaint, therefore this Motion to Dismiss is frivolous and without merit.

**III. GOVERNOR MINNER HAD PERSONAL INVOLVEMENT IN THE ALLEGED
CONSTITUTIONAL VIOLATIONS AFTER SHE PERSONALLY FAILED TO LIFT
A HAND TO A CONSTITUENT UNDER HER CARE.**

It is clear personal involvement when you know of a situation and fail to remedy that situation.

A Motion to Dismiss is to be made before an answer is filed. Governor Ruth Ann Minner has already Answered the Complaint, therefore this Motion to Dismiss is frivolous and without merit.

**IV. GOVERNOR MINNER HAS FAILED HER BURDEN TO SHOW THAT SHE
RECEIVES HER PAYCHECK FROM A STATE ACCOUNT AND NOT A COUNTY
ACCOUNT WHICH WOULD DISQUALIFY SOVEREIGN IMMUNITY ALONG
WITH QUALIFIED IMMUNITY.**

It is the burden of the defendant to prove with documentary evidence that they qualify for any immunities they claim as a defense. Defendant Governor Minner has failed this burden and waived sovereign immunity under the Eleventh Amendment.

A Motion to Dismiss is to be made before an answer is filed. Governor Ruth Ann Minner has already Answered the Complaint, therefore this Motion to Dismiss is frivolous and without merit.

RELIEF REQUESTED: The Supreme Court has stated that a plaintiff with an "arguable" claim should be permitted to amend the complaint before a pending motion to dismiss is ruled on. (See Neitzke v. Williams 490 U.S. 319 (1989)).

Therefore, Plaintiff requests that the Court either deny the Defendant's Motion to Dismiss or grant Plaintiff leave to amend His Complaint.

Dated: August 27, 2007

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Will. Joseph Webb Jr.", written over a horizontal line.

William Joseph Webb Jr.

256056 / D/EF17T

1181 Paddock Road

Smyrna, DE 19977

Certificate of Service

I, William J. Webb Jr. hereby certify that I have served a true and correct cop(ies) of the attached Brief in Opposition to Motion to Dismiss Upon the following parties/persons:

To: Eileen Kelly
820 North French Street
Wilmington, DE 19801

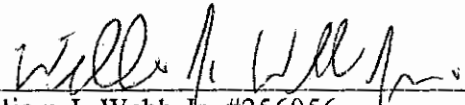
To: Patrick G. Rock
913 Market Street
Suite 800
Wilmington, DE 19801

To: First Correctional Medical
205 Giaconda Way
Suite 115
Tucson, AZ 85704

To: Dr. Ali
1301 East 12th Street
Wilmington, DE 19809

BY PLACING SAME IN A SEALED ENVELOPE, and depositing same in the United States Mail at the Delaware Correctional Center, Smyrna, DE 19977.

On this 27 day of August, 2007



William J. Webb Jr. #256056

IM William D. Webb Jr.
SBI# 256056 UNIT 0/1E F127
DELAWARE CORRECTIONAL CENTER
1181 PADDOCK ROAD
SMYRNA, DELAWARE 19977

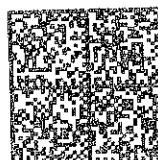
Legal Mail

Clerk U.S. Dist. Ct. DE
844 King Street
Coak 606 18
Wilmington DE
19801

1580133519 0012

|||||

U.S.M.S.
X-RAY



UNITED STATES POSTAGE
FIRST CLASS
\$00.58
02 1A
0004608975
AUG 31 2007
MAILED FROM ZIP CODE 19977